

**48 CFR Parts 852 and 871****RIN 2900-AQ76****VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Employment Programs****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. This rulemaking revises VAAR coverage concerning Loan Guaranty and Vocational Rehabilitation and Employment Programs, as well as an affected part concerning Solicitation Provisions and Contract Clauses.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:Background

On June 30, 2020, VA published a proposed rule in the Federal Register (85 FR 39151) which announced VA's intent to amend regulations for VAAR Case RIN 2900-AQ76 (parts 852 and 871). VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The comment period for the

proposed rule ended on August 31, 2020, and VA received no comments. This rule adopts as a final rule, with two technical non-substantive changes to the proposed rule published in the Federal Register on June 30, 2020.

These changes seek to align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**.

Technical Non-Substantive Changes to the Proposed Rule

VA is removing proposed section 871.209, Records and reports. VA has determined this section is unnecessary and no information collection requirements are required under subpart 871.2. Any records and reports requirements related to Veterans training are captured under other existing Veterans Benefits Administration policy and information collection requirements unrelated to this text or are covered by standard record keeping requirements and retention periods as set forth in FAR subpart 4.7. Accordingly, VA has renumbered the remaining proposed sections to 871.209, Prohibition on advertising—training of Veterans (from 871.209), and 871.210, Contract clauses (from 871.211), a result of this removal.

VA has updated the Table of Contents in subpart 817.2 to reflect the above removals and renumbering.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review)

emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the final rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 as they do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for

inflation) in any one year. This final rule would have no such effect on State, local, and tribal Governments or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 871

Government procurement, Vocational rehabilitation and employment.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 24, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR parts 852 and 871 as follows:

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

2. Revise sections 852.271-72, 852.271-73, and 852.271-74 to read as follows:

852.271-72 Time Spent by Counselee in Counseling Process.

As prescribed in 871.211, insert the following clause:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (NOV 2021)

The Contractor agrees that no counselee referred under the provisions of this agreement will be required to participate or engage in additional sessions or expend any extra time in connection with the counseling process, to supply test results or other information, for purposes other than those specified in this contract.

(End of clause)

852.271-73 Use and Publication of Counseling Results.

As prescribed in 871.211, insert the following clause:

USE AND PUBLICATION OF COUNSELING RESULTS (NOV 2021)

The Contractor agrees that none of the information or data gathered in connection with the services specified in this contract, or studies or materials based thereon or relating thereto, will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

852.271-74 Inspection of Instruction, Counseling or Testing Operations.

As prescribed in 871.211, insert the following clause:

INSPECTION OF INSTRUCTION, COUNSELING OR TESTING OPERATIONS (NOV 2021)

The Contractor shall permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and to examine the training facilities, the work of the Veterans in training under this contract, and the records of these operations, along with

any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.

(End of clause)

852.271-75 [Removed and Reserved]

3. Remove and reserve section 852.271-75.

4. Part 871 is revised to read as follows:

PART 871—VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

Subpart 871.1 [Reserved]

Subpart 871.2—Vocational Rehabilitation and Employment Service

871.200 Scope of subpart.

871.201 General.

871.201-1 Requirements for the use of contracts.

871.205 Proration of charges.

871.206 Other fees and charges.

871.207 Payment of tuition or fees.

871.208 Rehabilitation facilities.

871.209 Prohibition on advertising—training of Veterans.

871.210 Contract clauses.

Authority: 38 U.S.C. chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 871.1—[Reserved]

Subpart 871.2—Vocational Rehabilitation and Employment Service

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

(a) Contracts for training and rehabilitation services.

(b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. chapter 31.

(c) Contracts for counseling services under 38 U.S.C. chapters 30, 31, 32, 35, and

871.201 General.

871.201-1 Requirements for the use of contracts.

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses* means those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

871.205 Proration of charges.

A contract must include the exact formula agreed on for the proration of charges in the event that the Veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to

training on the job or to obtaining employment during a period in which the Veteran is a participant pursuant to 38 U.S.C. chapter 31, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with part 813.

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of

determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

871.208 Rehabilitation facilities.

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Prohibition on advertising—training of Veterans.

The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training Veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the

institution shall be limited to a list of courses under 38 U.S.C. chapter 31 and must not be directed or pointed specifically to Veterans.

871.210 Contract clauses.

(a) Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

- (1) 852.271-72, Time Spent by Counselee in Counseling Process.
- (2) 852.271-73, Use and Publication of Counseling Results.
- (3) 852.271-74, Inspection of Instruction, Counseling or Testing Operations.

(b) See 837.110-70(a) for clause 852.237-74, Non-Discrimination in Service Delivery.